IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9118 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GULAMNABI FAKIR AHMED SINDHI

Appearance:

1. Special Civil Application No. 9118 of 2001

MR ASHISH M DAGLI for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/03/2002

ORAL JUDGEMENT

#. Heard Mr.A.M.Dagali, learned advocate appearing on behalf of the petitioner Corporation.

#. This Court has passed order on 8th October, 2001 issuing RULE and notice as to interim relief and granted

Interim Relief in terms of para-7[C] of the prayer clause. The petitioner Corporation has challenged the award passed by the Labour Court, Baroda in Reference No.827 / 1996 dated 12th September, 2000, wherein the labour court has granted reinstatement with continuity of service and 50 % backwages of the interim period and also awarded punishment of stoppage of one increment without cumulative effect. Learned advocate Mr.A.M.Dagali appearing on behalf of the petitioner Corporation has submitted that the labour court has considered date of remaining absent incorrectly and mentioned in the award that the respondent has remained absent from 13th February, 1998 to 28th February, 1998 and the respondent workman has sent report for period from 22nd January, 1998 to 31st January, 1998. Mr.Dagali, learned advocate for petitioner Corporation has submitted that these are dates not correct according to the chargesheet and in fact the respondent workman remained absent for 2nd August, 1994, 3rd August, 1994 and 6th August, 1994 and thereafter for a period from 27th August, 1994 to 5th September, 1994. Thus, on these days stated above the respondent workman remained absent without prior permission of the concerned authority. Therefore, chargesheet was served on the respondent workman and after departmental inquiry, the respondent workman has been dismissed from service on 28th December, 1994. This dismissal order has been challenged by the respondent workman after period of three years and Reference has been referred for adjudication on 12th August, 1997. Learned advocate Mr.Dagali has also submitted that the past record was produced before the labour court by the petitioner Corporation vide Exh.5/19 even though the labour court has not considered this past record and in past similar misconduct of absenteeism on 19 occasions committed by the respondent workman and ultimately the petitioner Corporation has dismissed the respondent from service. Mr.Dagali, learned advocate has submitted that the petitioner Corporation has received the leave report subsequently after leave enjoyed by the respondent workman and therefore, said report cannot be taken into account. Therefore, learned advocate Mr.Dagali has submitted that the labour court has committed gross error in exercise of the powers under Section 11-A of the Industrial Disputes Act and granted reinstatement with 50% backwages of the interim period.

#. However, it is pertinent to note that Notice of Rule has been served on the respondent even though none appears for respondent workman, nor any advocate seems to have engaged by the respondent on his behalf and therefore, this matter is taken up for final hearing even

in absence of the respondent workman.

#. I have considered submissions of learned advocate Mr.Dagali on behalf of the petitioner Corporation. Learned advocate Mr.Dagali has rightly pointed out that past record was produced before the labour court vide Exh.5/19 in past record which is also produced before this Court at pg.27 of this petition, wherefrom it reflects that in all 19 defaults of remaining absent seem to have committed by the respondent workman. However, it transpires that the past record has not been taken into consideration by the labour court while granting relief of reinstatement with 50 % of the interim period. The another aspect that dispute has been raised by the respondent workman after three years. This aspect as not been taken into consideration by the labour court while granting 50 % backwages of the interim period. On the contrary the labour court has committed error in coming to the conclusion that past record of the workman is good. This observations is contrary to the past record which was produced by the petitioner Corporation on record. The labour court has not given any reason in support of granting 50 % backwages of interim period. However, the labour court has imposed the punishment of stoppage of one increment without cumulative effect. This is undisputed fact on record looking to the record found by the inquiry officer. However, it has come on record that the the respondent workman has submitted medical certificate and leave report for a period from 2nd August, 1994, 3rd August, 1994 and 27th August, 1994 to 5th September, 1994. However, the respondent workman has not submitted any leave report for 6th August, 1994 undisputedly found from the findings recorded by the inquiry officer. Therefore, considering this aspect to remain absent for this period due to sickness which has been justified on the basis of the medical certificate, according to my opinion, considering two decisions of the Apex Court reported in [i] AIR 1994 SC 215 and [ii] 1999 SCC [Lab & Service] 666, the view taken by the Apex Court, to remain absent due to sickness, punishment of dismissal can be said to be disproportionate. Therefore, considering the entire record that the workman has submitted leave report, no doubt, subsequently along with medical certificate to remain absent for period as mentioned in the chargesheet except on date 6th August, 1994, fact remains that the workman has remained absent on account of ill health. Therefore, considering these aspects, according to my opinion, reinstatement order which has been passed by the labour court with continuity of service and imposing punishment of stoppage of one increment without cumulative effect is legal and valid

order, need not require to be interfered with by this Court and therefore, the same is not disturbed by this Court. However, the relief of 50 % backwages granted by the labour court with effect from 28th December, 1995 is erroneous order passed by the labour court because the dispute was raised after three years from the date of dismissal and especially when in all 19 defaults of absent registered against the respondent workman. Therefore, considering these two aspects of the matter, according to my opinion, 50 % backwages of the interim period granted by the labour court in favour of the respondent workman requires to be quashed and set aside.

#. In view of above discussion, present petition is allowed accordingly. The directions issued by the labour court granting 50 % backwages with consequential benefits is hereby quashed and set aside but the directions as to reinstatement of respondent workman with continuity of service remain intact and not disturbed by this Court.

Rule is made absolute with no order as to costs.

Date : 18-3-2002 [H.K.Rathod, J.]

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